Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE
COURT OF APPEALS OF INDIANA

JESSE BRIONES, Jr.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 91A04-0606-CV-304
	)	
THERESA BRIONES,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE WHITE CIRCUIT COURT
The Honorable Robert Thacker, Judge
Cause No. 91C01-0412-DR-159

May 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Jesse Briones appeals the trial court's denial of his motion for relief from judgment. Briones raises one issue, which we revise and restate as whether the trial court abused its discretion by denying his motion for relief from judgment. We affirm.

The relevant facts follow. On February 2, 2006, Theresa Anderson, by way of the White County Title IV-D office, filed a petition for a review hearing on Briones's petition for modification of child support. On March 3, 2006, the trial court held a hearing,[1] orally denied Briones's petition for modification of child support, and orally entered an arrearage judgment. That same day, the trial court made a chronological case summary entry that stated, in part, that the "[c]ourt enters Order denying [Briones]'s Petition for Modification of Child Support and enters arrearage judgment." Appellee's Appendix at 1-2. On March 9, 2006, the trial court entered a written judgment and order on child support and a child support arrearage judgment as a result of the hearing held on March 3, 2006.

On April 13, 2006, Briones filed a notice of appeal with the trial court. In the affidavit of service of his notice of appeal, Briones stated that he served a copy of the notice of appeal on April 7, 2006, by placing the "same in a properly addressed envelope with sufficient first-class postage, and delivering it to the Law Library at Westville Correctional Facility for prompt processing and mailing by authorized facility personnel." Appellant's Appendix at 7. On April 17, 2006, the trial court denied

[1] The record does not include a transcript of the hearing.

Briones's notice of appeal because it was not timely filed. On May 8, 2006, Briones filed a motion for relief from judgment, which the trial court denied. On May 18, 2006, Briones filed a notice of appeal.

The sole issue is whether the trial court abused its discretion by denying Briones's motion for relief from judgment. The motion for relief from judgment is governed by Ind. Trial Rule 60(B), which provides, in pertinent part, that "[o]n motion and upon such terms as are just the court may relieve a party or his legal representative from an entry of default, final order, or final judgment, including a judgment by default, for the following reasons . . . mistake, surprise, or excusable neglect." A motion for relief from judgment is within the equitable discretion of the court, and appellate review of the grant or denial thereof is limited to whether the trial court abused its discretion. D.D.J. v. State, 640 N.E.2d 768, 769 (Ind. Ct. App. 1994), trans. denied. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable inferences to be drawn therefrom. Id.

Briones appears to argue that the trial court abused its discretion by denying his notice of appeal because "if the trial court received it a couple of days past the deadline it was from excusable neglect." Appellant's Brief at 2. Briones argues that he gave his notice of appeal to the law library on April 7, 2006, which should be considered the time of filing pursuant to Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379 (1988), and McGill v. Indiana Dep't of Correction, 636 N.E.2d 199 (Ind. Ct. App. 1994), reh'g denied.

The State argues that "[i]f this Court considers [Briones]'s date of filing to be April 7, 2006, pursuant to the so-called 'prison mail-box rule,' then by his own admission, his notice of appeal is still not timely" under Ind. Appellate Rule 9. Appellee's Brief at 5. Ind. App. Rule 9(A)(1) provides, "A party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of a Final Judgment." Ind. App. Rule 9(A)(5) provides that "[u]nless the Notice of Appeal is timely filed, the right to appeal shall be forfeited . . . ." The State argues that "[f]inal judgment in this case was entered on March 3, 2006, when in open court, the trial court entered an order denying [Briones]'s petition for modification of child support and entered an arrearage judgment." Appellee's Brief at 4. Thus, we must determine whether the March 3, 2006 hearing and subsequent CCS entry constitute a final judgment.

The chronological case summary entry dated March 3, 2006, states that, on that same date, the trial court held a hearing and "enters Order denying [Briones]'s Petition for Modification of Child Support and enters arrearage judgment." Appellee's Appendix at 1-2. "A judgment is a final judgment if . . . it disposes of all claims as to all parties." Ind. Appellate Rule 2(H). Because the trial court disposed of Briones's petition for modification and entered an arrearage judgment, the judgment disposed of all claims as to all parties and the trial court's March 3, 2006, order constitutes a final judgment.

Ind. Appellate Rule 9(A) requires that a notice of appeal from a final judgment be filed within thirty days after the "entry" of the final judgment. We have previously

emphasized when a party has notice of a ruling. In Smith v. Deem, 834 N.E.2d 1100, 1105 (Ind. Ct. App. 2005), trans. denied, we addressed when the entry of a final judgment occurred for purposes of Ind. Appellate Rule 9(A). We concluded that:

> In cases where, for whatever reason, there is a delay between the trial court's rendition of judgment and the entry into the [Record of Judgments and Orders], as is the case here, several things can be said. First, the judgment or order is effective as between the parties from the date it is rendered. In addition, the date of entry into the [Record of Judgments and Orders] is generally the date from which the appellate time limit begins to run. Indeed, upon entry, the parties are required to be given notice. But where, as here, a party does have notice of the trial court's ruling before its entry into the [Record of Judgments and Orders], we see no reason to justify allowing that party to delay filing a Notice of Appeal within thirty days of the date on which the party received notice simply because the clerk has not performed a ministerial task.

Smith, 834 N.E.2d at 1110 (internal citations omitted).

Because the trial court entered the order denying Briones's petition at the hearing in Briones's presence, Briones had notice of the trial court's ruling, and we see no reason to justify allowing Briones to delay filing a notice of appeal within thirty days of the date of the March 3, 2006 hearing. See Smith, 834 N.E.2d at 1110. Thus, even assuming, without deciding, that Briones filed his notice of appeal on April 7, 2006, his notice of appeal was after the thirty-day deadline. Therefore, Briones forfeited his appeal. See id. (dismissing party's appeal because party knew of trial court's order and did not timely file her notice of appeal).

For the foregoing reasons, we affirm the trial court's denial of Briones's motion for relief from judgment.

Affirmed.

MAY, J. and BAILEY, J. concur